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AUTHOR Zimlich, Norm; And Others
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ABSTRACT

In October 1984, a national program inspection on preventing child sexual abuse in day care programs was begun. Program inspections are short-term studies designed to provide qualitative information and quantitative data for use by the Department of Health and Human Services as an additional source of information. Participants in this study, from 49 states and the District of Columbia, included state child protective staff and social workers, state licensing officials, city and county licensing officials, state criminal identification system directors, physicians, sexual assault therapists, child psychologists, district attorneys, police investigators, other experts in the field of child sexual abuse, day care providers, parents of children in day care, and special interest organizations. Brief statements of major findings; recommendations for education, research, and screening; and cost implications are followed by a background discussion of child sexual abuse and additional discussions of (1) Public Law 98-473 and the FBI criminal record system; (2) current screening practices in the states; (3) the potential scope of screening; (4) the potential cost of screening; (5) the effectiveness of screening; (6) and education for prevention. (RH)

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PREVENTING SEXUAL ABUSE IN DAY CARE PROGRAMS

National Program Inspection

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Office of Inspector General
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January 1985

[Norm Zimlich, Kaye Kidwell, Kathy Admire, Len Czajka]

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Program inspections are short-term studies of HHS programs. They are not designed to be statistically valid research studies, compliance reviews, audits, program monitoring activities, or traditional program evaluations. Rather, program inspections consist of gathering both qualitative information and quantitative data. Program inspection results are meant to be used internally by Department managers as an additional source of information.

The Office of Inspector General acknowledges the ready assistance of the OHDS Office of Regional Operations and all ten regional staffs in collecting state information. We are particularly grateful for the additional assistance of OHDS Region X staff in other aspects of this study.

Norm Zimlich

REGIONAL INSPECTOR GENERAL
OFFICE OF PROGRAM INSPECTIONS
U.S. DEPT. OF HEALTH & HUMAN SERVICES
THIRD & BROAD BUILDING - MS 309
SEATTLE, WASHINGTON 98121
PH. (206) 442-0490 FTS: 399-0492

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INTRODUCTION

A challenging by-product of the changing composition of America's workforce is the increasing need for day care. In 1980, there were 19.6 million children under 6, and 8.7 million of them had mothers who worked outside the home. By 1990, these numbers will increase to 23 million and 12 million respectively.[1] There are more than 11 million employed mothers with children between 6 and 18. It is projected that by 1990, the number of 6 to 9-year-olds alone will total 15 million. Traditionally children's primary caretakers, employed mothers must turn to others for child care.

Day care is needed for children of all ages, but is absolutely necessary the younger the children are. An estimated 2 to 7 million school-aged children are left alone after school each day.[2] A 1982 study shows that 36% of mothers working full time outside the home had their 3 and 4-year-olds in the care of a relative, 32% placed these preschoolers in day care and nursery schools, and 18% placed their children in nonrelative family home settings.[3]

Within recent months, the tragedy of child sexual abuse in day care settings has garnered public attention. The problem is being discussed by parents, teachers, physicians, therapists, day care providers, law enforcement officials and law-makers. Within the public forum, Congress took action by enacting P.L. 98-473, which provides supplementary funding to the Social Services Block Grant program for training, including prevention of child abuse in day care settings. In order to retain all of these training dollars, states must implement by September 30, 1985, procedures to screen specified child care personnel through employment history, background and nationwide criminal record checks. In addition, Congress required the Department of Health and Human Services to draft model licensing and registration standards for day care centers, group homes and family day care homes.

In October 1984, the Under Secretary requested the Inspector General to conduct a national program inspection on the issue of prevention of child sexual abuse in day care programs. Accordingly, staff from the Office of Inspector General and the Office of Human Development Services talked to 300 persons from 49 states and the District of Columbia. Participants in the study included state child protective staff and social workers, state licensing officials, city and county licensing officials, state criminal identification system directors, physicians, sexual assault therapists, child psychologists, district attorneys, police investigators, other experts in the field of child sexual abuse, day care providers, parents of children in day care, and special interest organizations.

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1 Families and Child Care: Improving the Options, A Report by the House Select Committee on Children, Youth and Families, September 1984, p. 12.

2 Ibid. p. 23.

3 U.S. Bureau of Census, Current Population Reports, P-23, No. 129, "Child Care Arrangements of Working Mothers," June 1982.

MAJOR FINDINGS

1. Most known sexual abuse of children occurs in the home. There is a clear cycle of abuse begetting abuse: abusers who were abused as children, and mothers allowing their children to be sexually abused because their own fathers did it to them.

2. There is no profile or predictive model of child molesters. A number of professional studies, some funded by the National Institute of Mental Health, are underway on the identification and treatment of sex offenders.

3. Pedophiles can be attracted to day care programs, can abuse hundreds of children without being caught, are often not convicted after being arrested, and may have no criminal records even if they plead guilty to sexually abusing children. Experts estimate only 1% to 15% have any criminal records, and not necessarily for sex crimes.

4. Experts unanimously agree that education of parents, children, teachers, and day care providers to recognize, resist and report sexual abuse is the most effective method of preventing sexual abuse, both in the home and in child care programs. Employment screening techniques, including background and reference checks and criminal record screens, are seen as desirable but no guarantee that child molesters will be identified.

5. Twenty-four states currently screen some day care operators and/or staff against state criminal record files, but only California, Georgia and Minnesota have statutes for national criminal record screening of such employees. Only California and New York City have undertaken extensive fingerprinting of day care employees.

6. The only feasible approach to nationwide criminal record screening is the FBI fingerprint screen authorized under P.L. 92-544, which usually needs to be supplemented with a state criminal record screen. The cost of this dual screen is estimated at $25 per person screened.

7. To screen all licensed day care providers and employees would require screening half a million persons in each of the next three years. This would exclude about 350,000 unlicensed providers and all volunteers, even though in many of the known abuse cases the perpetrators were not direct program employees, but volunteers, relatives of providers or peripheral employees.

8. Licensing and employment screens typically reveal 5-8% of the applicants with <u>any</u> criminal record whatsoever. For many reasons it is quite likely that only a minuscule number of sex abusers with criminal records would be detected by screening all day care employees.

9. There are substantial timing, technical and due process problems with implementing the screening provisions of P.L. 98-473.

RECOMMENDATIONS

EDUCATION

1. As a first priority in prevention of child sexual abuse, HHS should support education of parents, children, child care providers and staff in how to recognize, resist and report child sexual abuse.

2. HHS should promote more nationwide television educational spots and programs raising adult and child awareness of these methods.

3. HHS should prepare and distribute to appropriate child care grantees and to the public written information on this subject.

4. HHS should prepare and disseminate to appropriate grantees and other child care providers educational materials on how to (a) screen, check on and hire child care employees, (b) arrange facilities and staff, and (c) supervise staff so as to avoid child abuse in child care programs, as well as materials on how to handle reported abuse.

RESEARCH

HHS should continue to fund research into the profiling, detection and treatment of child molesters, and should assure that NIMH research currently underway finds practical application in effective public education materials.

SCREENING

1. HHS should require appropriate grantees to:

   a. Explicitly advise every employee and volunteer that sexual activity with children is illegal.

   b. Obtain from every employee and volunteer a signed declaration of prior criminal arrests, charges, and dispositions.

   c. Conduct background and former employer reference checks for all prospective employees.

   d. Obey state laws applicable to licensed or registered child care programs for screening or criminal record checks of current or potential employees.

   e. Have a plan for responding to suspected or reported child abuse whether it occurs inside or outside the program.

2. The Secretary should publicize that criminal record screens of child care employees are desirable but are no guarantee of safety from child molesters (who seldom have criminal records) even in licensed centers; rather, that the best protection of children in child care depends on (a) education and alertness of parents, staff and children, (b) careful listening and observation by parents and staff, (c) child care participation and monitoring by parents, and (d) parent networks within programs.

3. HHS should carefully monitor the states' implementation of PL 98-473 to determine whether the intent of Congress, particularly with respect to education and screening to prevent child sex abuse, is carried out.

4. HHS should rapidly advise the states as to the nature and scope of child care staff screening which must be instituted by September 30, 1985, to retain full funding under P.L. 98-473.

COST IMPLICATIONS

We estimate that some of the $12.5 million which Congress intended to be spent for preventive education might have to be recouped by HHS for technical state non-compliance with the screening requirements.

If all states were to comply literally with full FBI fingerprinting of all licensed day care employees, an estimated outlay from government or private funds of some $37.5 million would be made over three years, the authorized funding period. At least half of this would be wasted on extremely low-yield fingerprint screening.

"We've had only one day care case--a man who molested preschool boys. When asked how many boys he had assaulted during his life, he said, 'You don't have a piece of paper long enough to write down the names.' He is 28 and had no prior record."
An Assistant District Attorney

BACKGROUND

The extent to which child sexual abuse occurs is unknown. Most of the national experts contacted in this study emphasized that no one really knows because most abusive incidents are not reported. Of those who ventured an estimate, the most common figures were 1 in 4 or 5 girls and 1 in 9 or 10 boys are sexually abused before age 18. Although the age of greatest risk is estimated to be between 8 and 13, children of all ages are assaulted. In one program treating assault victims, one-third of the children treated are under age 6.[4] Professional research is increasing and offers heightened understanding of the problem's magnitude. Data gathered from the sexual offenders program at the Oregon State Hospital reveal that 35 men admitted responsibility for 20,276 separate sex crimes. Of these, 18 men admitted more than 5,000 assaults of 1,000 children. One offender alone admitted abusing 500 children before being caught.[5] In an ongoing study of sex offenders, Dr. Judith Becker, Columbia University, found that 659 men admitted committing 280,000 sex crimes, of which the number committed against children is unknown. However, 58% of these offenders began their assaults while still in their teens. These figures are startling, but provide a glimpse at the extent to which a few offenders can abuse so many different persons.

Formal crime reports of abuse and clinical work with convicted abusers reveal that most sexual abusers are known by their victims. According to reported data on known abusers compiled by the American Humane Association (AHA), the federally-funded national reporting system on abuse, 95-98% of known abuse occurs in the home, by close relatives, family friends or neighbors--that is, by someone whom the child knows well and trusts. AHA statistics reveal that 77% of the known abusers were parents (fathers, stepfathers, foster fathers), 16% were other relatives (grandfathers, uncles, cousins, brothers), and 6% were others (including both strangers and persons known by the child). Although most known data indicates that men are the primary perpetrators, researchers and clinical therapists are now learning that there are more female perpetrators than ever realized. Some experts estimate that women may comprise as high as 20-30% of abusers.

Although there are problems about using such statistics, there is common agreement among the experts that much of the abuse goes unreported. In addition, most research done to date tells us more about intrafamilial abuse than it does about extrafamilial abuse.

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4 Lucy Berliner, Sexual Assault Center, Harborview Hospital, Seattle, WA.

5 Unpublished data provided by Robert Freeman-Longo, Director, Sex Offender Unit, Correctional Treatment Programs, Oregon State Hospital.

Nationally recognized experts contacted in this study agree that no applicable profile of sexual abusers exists. Five experts said explicitly:

- "Don't believe anyone who says there is an abuser profile. There simply is no such thing."
- "There is no profile--that's part of the problem."
- "There is no sex abuser predictive model. Most studies of abusers are of incarcerated individuals and statistically invalid."
- "The typical psychologist cannot spot a sex offender. Sex offenders can even pass polygraph tests."
- "A trained psychologist can't identify an abuser easily. Even after treating 300-400 sex offenders, I would pick up a lot of 'false positives.'"

In an effort to develop predictive as well as treatment information, the HHS National Institute of Mental Health, through its Rape Center and its Center for Antisocial and Violent Behaviors, has funded the following recent and/or current studies:

1. Evaluating Sex Offender Treatment Programs, Mark Weinrote, Evaluation Research Center, Eugene, Oregon. (5/79 - 3/81.)
2. The Rapist's Social Background and Criminal Career, James Galvin, National Council on Crime and Delinquency, San Francisco, California. (5/79 - 3/81.)
3. Subtyping of Sex Offenders, Raymond Knight, Brandeis University. (4/80 - 3/87.)
4. Sex Agression: Constructing a Predictive Equation, Clarke Institute of Psychiatry, Toronto, Canada. (5/81 - 4/82.)
5. Incarcerated Rapists: Exploring a Sociological Model, Diana Scully, Virginia Commonwealth University, Richmond, Virginia. (9/81 - 4/83.)
6. Prevention of Relapse in Pedophiles, Richard Laws, Specific Professional Association, Morrow Bay, California. (1984 - present.)
7. Evaluation and Treatment of Child Molesters, Gene Abel and Judith Becker, Columbia University, New York. (1984 - present.)

Although there is no predictive model or abuser profile to aid in identifying child sex abusers, there are some common descriptors. Sex abusers come from all socio-economic backgrounds. As a police investigator noted, "They are beggars to bankers." There is a victim cycle, both of the abuser himself and the child's mother or guardian who knowingly does nothing to stop the abuse. Study respondents cited that as many as 75% of offenders have been victims themselves. Although female victims are less likely to become abusers, they often become covert perpetrators who fail to protect the child. As an investigator summarized, "An abused girl becomes the mother of an abused child and then the grandmother of an abused child. She rationalizes, 'It's not so bad--my father did it to me. It's expected.'"

Most abusers maintain otherwise responsible lives. They are often considered "real nice guys," whose friends and neighbors are shocked if they are caught and publicly identified. Although some are psychotic or mentally ill, many more have cognitive distortions. They rationalize their behavior as "sex education." "The kids like it." "Kids are consenting." "It doesn't hurt them."

The research of Dr. A. Nicholas Groth was referred to frequently by study respondents, as the state-of-the-art in describing child sex abusers. He describes two types of pedophilic behavior:

FIXATED

- Primary sexual orientation is to children.
- Pedophilic interest begins during adolescence.
- No precipitating stress/no subjective distress prior to the assault.
- Persistent interest--compulsive behavior.
- Preplanned, premeditated offense.
- Equalization: offender identifies closely with the victim and equalizes his behavior to the level of the child; offender is a pseudopeer to the victim.
- Male victims are primary targets.
- Little or no sexual contact with agemates; offender is usually single.
- Usually no history of alcohol or drug abuse.
- Characterological immaturity/poor socio-sexual peer relationships.
- Offense = maladaptive resolution of life issues.

REGRESSED

- Primary sexual orientation is to agemates.
- Pedophilic interest emerges in adulthood.
- Precipitating stress usually evident.
- Involvements may be more episodic.
- Initial offense may be impulsive, not premeditated.
- Substitution: offender replaces conflictual relationship with involvement with the child; victim is a pseudo-adult substitute.
- Female victims are primary targets.
- Sexual contact with child co-exists with sexual contact with agemates; offender is usually married/common-law.
- In more cases the offense may be alcohol related.
- More traditional lifestyle but underdeveloped peer relationships.
- Offense = maladaptive attempt to cope with specific life stresses.[6]

Study respondents also agreed that there is no such thing as an abused child profile. Children frequently do not tell when they are sexually abused because they are afraid that (a) they or someone they love will be punished or killed, (b) no one will believe them or (c) they are responsible in some way for the abuse. Also, children may not be able to tell someone directly, either lacking the language skills or being too young to verbalize. There are, however, signals or "red flags" that may indicate that a child has been assaulted. The following signals may help in detecting sexual abuse in children:

- Inappropriate sexual knowledge or behavior, e.g., preschooler knowledge of sexual intercourse
- Sudden withdrawal, passivity or depression

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6 Adapted by Robert E. Freeman-Longo from Sexual Assault of Children and Adolescents, by Ann W. Burgess, A. Nicholas Groth, Lynda Lytle Holmstrom and Suzanne M. Sgroi, Lexington: Lexington Books/D.C. Heath, 1978.

- Sudden active or violent behavior
- Fantasy or infantile behavior
- Poor peer relationships
- Self-mutilation
- Suidical actions or discussions
- Reluctance to go certain places, e.g., neighbor's house
- Change in eating habits or gagging around food
- Multiple personalities
- Psychosomatic disorders
- Nightmares, fear of the dark, or sudden bedwetting
- New fears
- Dislike or avoidance of someone previously liked, including a parent
- Bodily bruises
- Irritation or pain in genital/rectal areas
- Venereal disease, especially under age 13
- Difficulty in walking or sitting
- Torn, bloody underwear
- Early pregnancy
- Truancy or runaway behavior

Of all of these, the most telling sign of sexual abuse is unusual sexual behavior beyond the child's age level in both verbal and action cues. "All sexual behavior is learned. Children either observe it or experience it," reminded Lucy Berliner of the Seattle Sexual Assault Center. In sum, any sudden and/or unusual behavior in a child may be caused by sexual assault and should be investigated.

Generally, the best advice offered to detect sexual abuse is to educate parents, teachers and caretakers to watch children carefully, listen to what they have to say and recognize the signals or indicators of possible abuse. Then, the key is to believe the child when abuse is asserted.

There are several reasons why abusers avoid detection. Historically, society collectively has been unwilling to recognize or talk about child sexual abuse, making it easier for abusers to evade discovery. With few exceptions, child sexual abuse is not observed by witnesses. It is performed in isolation, in secrecy, and the victims are reluctant to report it. The child may not know or may be convinced by the abuser that nothing is wrong with the act. Children, especially the very young, are too trusting and are easily manipulated. Some abusers convince their victims to assume the responsibility and/or guilt for the abuse. In other situations, abusers intimidate their victims, coercing them into compliance by threatening to harm them or a loved one, "If you tell, your mother will die." In some cases, they try to target children who are neglected or whose parents are having life adjustment problems, such as death, separation or divorce. Even when detected, they frequently move on and with the absence of an interstate tracking system easily avoid detection.

As little is known about the cause or deterrence of child sexual abuse, little is known also about treatment for abusers. Some believe that incarceration is the only answer, that the pathology of a pedophile is so intractable he must be taken out of circulation. A few respondents suggested self-help programs like Parents United, wherein support groups of former abusers work with current abusers under supervision of trained psychologists. Others suggested use of medication (to lower the level of the male hormone testosterone and reduce the abuser's sexual drive) or aversion therapy. Dr. Vincent Fontana, Chairman of the New York City Mayor's Task Force on Child Abuse and Neglect, summarized the views of most respondents, "We can't determine effective treatment until we know more about the problem."

"The amendment...is a modest first step that would help states establish and improve child abuse prevention programs."
Senator Levin, Introducing P.L. 98-473

THE NEW LAW AND THE FBI CRIMINAL RECORD SYSTEM

New legislation enacted as part of P.L. 98-473, continuing appropriations for fiscal year (FY) 1985, (a) requires the Department of Health and Human Services to draft a Model Child Care Standards Act for states' consideration by January 12, 1985, and (b) authorizes (without an appropriation) challenge grants to the states for child abuse prevention activities with federal funds to accrue the year following that in which the states earmark their own funds.

This act also authorizes and appropriates $25 million under the Title XX Social Services Block Grant, to be distributed to each state proportionate to its other Title XX funding for the purpose of training (including training for child abuse prevention) providers, operators and staffs in licensed or registered child care facilities. To keep from losing one-half of these funds in FY 1986 and FY 1987, however, states are required to have in effect by September 30, 1985, (1) procedures established by state law or regulations to provide for employment history and background checks and (2) provisions of state law consistent with P.L. 92-544 requiring nationwide criminal record checks for all current and prospective operators, staff, or employees of child care facilities and juvenile detention, treatment, or correction facilities. The child care facilities are defined to include any facility or program having primary custody of children for 20 hours or more per week.[7]

The only feasible way for a state to conduct a "nationwide criminal record check" on any person is to access information contained in the computerized criminal history file of the Federal Bureau of Investigation. P.L. 92-544 authorizes the FBI to exchange identification information from this file with duly authorized officials of state government, "if authorized by state statute and approved by the Attorney General."

In fact, the Attorney General, through the FBI Identification Division, has screened and approved over 500 state statutes requiring FBI fingerprint checks for employment or licensing purposes. Last year, out of a total of 6 million fingerprint cards submitted for all criminal and other screening purposes, the Identification Bureau screened 697,000 fingerprints for licensing or employment purposes. Screening is free of charge to authorized law enforcement agencies in return for their cooperation in supplying arrest and disposition information to the FBI. However, the FBI collects a fee of $12 per screen (i.e., per fingerprint card submitted) for licensing/ employment checks. Fingerprint cards are submitted to the FBI via the single approved state identification bureau, such as the state police, and are returned to that bureau or directly to the state licensing or social service agency authorized in the state statute.

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7 Congressional Record, October 2, 1984, p. S12710.

A state statute is accepted by the FBI for inclusion in the process so long as it (a) does not violate public policy (e.g., Civil Rights) and (b) clearly shows that the state legislature intended that a nationwide check be conducted. The FBI is prepared to screen any state laws submitted in accordance with P.L. 98-473 and to accept fingerprint cards on child care staff accordingly for the $12 fee. However, our discussions with the FBI's Identification Bureau indicated that they do not intend to review compliance with P.L. 98-473, i.e., the FBI will not determine whether the scope or coverage of the state statutes with respect to the type of staff or facilities involved is sufficient to qualify the state for continued training funds under Title XX. The FBI considers such determinations to be the responsibility of HHS.

The FBI's National Crime Information Center (NCIC) is currently developing a new criminal record access system decentralizing all record-keeping to the states. Under this new Interstate Identification Index, states will maintain their own statewide records, which will be accessible through a computer query of the FBI file. Only 15 states are now participating in demonstrations of the new system. While this system conceivably might reduce the necessity for fingerprint checks, the NCIC Policy Advisory Board strongly opposes its use for employment/licensing screening because of the wide divergence of state laws concerning the dissemination of criminal history information for such purposes. Some states even deny federal agencies, such as the Office of Personnel Management, access to state criminal record information for federal employment screening. Both the FBI and state identification bureau officials emphasize that name checks or any other screening without fingerprints are subject to error and misapplication when used for licensing/employment screening purposes.[8]

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8 Robert A. McConnell, Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice: Memo of June 11, 1984, to the Honorable Strom Thurmond, Chairman, Senate Judiciary Committee, with reference to S. 1924.

CURRENT SCREENING PRACTICES IN THE STATES

The FBI has approved licensing/employment screening statutes for all but nine of the states in one or more areas of employment. Forty-one states and the District of Columbia require FBI checks for employment in the banking and/or securities industries, and 37 states require FBI screening for federal employees. Over half the states require such screening for private investigators and/or gambling establishments, and many states require such screens in conjunction with gun permits and/or alcohol distribution. In New Jersey, one must have an FBI check to run a bingo or raffle, do acupuncture, be a firefighter, plumber, undertaker or cigarette salesman. In Texas, such a check is required for junk dealers, pest controllers, union business agents and marriage counselors. In the District of Columbia, an FBI screen is required to operate a bowling alley or a massage parlor, or to be a cab driver, pawnbroker, fortune teller, clairvoyant or medium.

In professional occupations, such screening is required less frequently. Only 12 states require FBI screens for teachers, doctors, dentists, nurses and/or lawyers, with California, Minnesota and New Jersey requiring the most screens. Only three states have approved statutes requiring FBI screens for any directors or staff of day care programs: California, Georgia (directors only) and Minnesota. Minnesota's authorized use of FBI screens has not been implemented because of budget limitations.

States vary considerably on (a) what sorts of child care they license or register, (b) whom they screen: whether operators, teachers, peripheral staff or volunteers, (c) how they screen: whether by fingerprints, name checks or reference checks, and (d) what records they screen against: whether against the FBI file, state criminal record files, or the state's child abuse/neglect registry. A number of recent surveys of day care licensing practices in the states are available.[9] However, these largely fail to describe the employment screening practices used by the various jurisdictions. Most of the information which follows was collected for this study from discussions with state staff.

All states license at least some child care facilities, usually called day care centers or group homes. Thirty states license family day care homes, 12 states register family day care homes, and 3 states do both. Five states license only subsidized family day care.[10]

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9 - Minimum Standards for Day Care Centers, National Association for Child Care Management, (1983), 1800 M Street N.W., Suite 1030N, Washington, DC 20036.

- Comparative Licensing Study, Administration for Children, Youth and Families, Office of Human Development Services (1981), Washington, DC.

- Day Care Centers in the U.S.--A National Profile 1976-1977, (1978), ABT Associates, Cambridge, MA.

10 Adams, D., "Family Day Care Registration: Is It Deregulation or More Feasible State Public Policy?" Young Children, 4:75, 1984.

Although only three states use FBI fingerprints to screen day care directors and/or employees, the practice of screening these persons using names, fingerprints or other identifying information against state criminal record files and/or abuse registries is more widespread. Name checks, used alone, miss anyone who has legally changed his name or adopted an alias and generally are far less accurate. Twenty-four states indicated that they currently perform statewide criminal record screens of directors, employees or both. These usually are limited to licensed programs, though not necessarily applied to all licensed day care programs.

While virtually all states maintain child abuse and neglect registries identifying abusers within families, only 15 states use the registry as a screening tool for child care employment or licensing. Because some states have not consistently purged their registries, many contain names of people for whom the allegation of child abuse was never substantiated. Since most of the people listed on these registries have not been prosecuted, any expanded use of the registries as a screening tool for employment could result in due process or legal challenges. Besides the state criminal file and the registry, 24 states require other forms of background checks and/or employee certification of criminal history. Only 14 states use none of these screening tools for child care employment or licensing.

This picture is complicated further by variations in employee coverage: 23 states apply screening to day care program directors, 22 states to day care program employees, but only 18 states to both. Ten states use some type of screen for day care volunteers.

Variations exist also within state boundaries. A few states give cities and counties the option to use certain screens. Probably the most significant of these is New York City, where a new city law, effective October 1, 1984, mandates fingerprinting of all day care center directors and staff as well as of all licensed family day care operators and all adults in these homes. The fingerprints will be screened against the state criminal file (not the FBI file). Meanwhile, the state of New York requires screening of day care staff against the state child abuse registry, but not against the state criminal record file.

Finally, this incredibly complex pattern of screening variations is in flux, with at least 20 states anticipating new legislation to authorize some sort of criminal record screens for day care operators, employees and/or volunteers.

POTENTIAL SCOPE OF SCREENING

Based on a sample of 60,000 home interviews conducted in 1983, the U.S. Bureau of Labor Statistics (BLS) estimates that 1,041,000 child care workers are employed in the U.S., with another 80,000 unemployed. Of those employed, 408,000 work in private homes. This group is 95% female and includes child attendants, mothers' helpers, nursemaids, day care workers, baby sitters and governesses. The other 633,000 work in other-than-private homes. This group is 97% female and includes day care workers, day care aides, attendants, Head Start workers, house parents, playground monitors and bus drivers in day care centers. These numbers are quite comparable to those projected from informal estimates by state officials in 10 states which were subsampled in this study.

Presuming that most of what the BLS described as "child care in other-than-private homes" means day care centers and group homes, these are virtually all licensed by states.[11] It is more difficult, however, to estimate what portion of in-home child care or family day care is licensed or registered. The 1981 National Day Care Home Study found that of an estimated 1.3 million day care homes, only 137,865 (10.6%) were regulated.[12]

We estimate, therefore, that 633,000 persons work in licensed day care centers or group homes; and 43,200 (408,000 x 10.6%) work in licensed family day care, for a total of 676,200 employees in licensed day care in the U.S.

Family day care workers, babysitters and nannies have, according to BLS, the highest turnover rate of any group of workers in the country, at 58.8% per year, while workers in day care centers, nursery schools and Head Start rank 9th on the turnover list, at 41.7% per year--right up there with dishwashing, peddling and pumping gasoline.[13] Assuming a conservative turnover-plus-growth rate of 45% per year, an estimated 980,490 individuals will be employed in licensed day care in this country in calendar year 1985, and 1,589,070 persons will be employed in licensed day care during calendar years 1985-1987.

Therefore, if some form of criminal record screening were applied to all operators and immediate employees of licensed day care programs during the period 1985-1987, the nationwide volume of staff to be screened would exceed half a million persons in each of the three years, assuming no repetitive screening. These estimates do not include family members, volunteers or other employees with access to the children, e.g., janitors. They also exclude an estimated 364,000 workers in unlicensed family day care.

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11 ABT Associates, Cambridge, MA, Day Care Centers in the U.S., a National Profile, 1976-1977, p. 10.

12 Fosburg, S. "Family Day Care in the United States: Summary of Findings," Final Report of the National Day Care Home Study (DHHS Publication #OHDS-80-30282).

13 BLS Occupational Projections and Training Data, as quoted in Day Care USA Newsletter, Vol. 13, No. 9, September 10, 1984, p. 3.

POTENTIAL COST OF SCREENING

Costs of a criminal record check depend, of course, on the nature of the check being performed, and particularly upon whether the check involves a fingerprint screen. The FBI charges $12 for each fingerprint card submitted for nationwide licensing/employment screening.

State identification bureau officials with whom we spoke agreed that any criminal record screen should include checks against both the state criminal file and the FBI file. Those states using fingerprints to screen against their state files unanimously agreed that two separate fingerprint cards would be necessary to do both a state and an FBI screen. State costs associated with screening vary:

California	$15.50	Kansas	$ 6.00
Florida (counties)	$ 5.00	Nebraska	$ 5.00
Georgia	$12.00	New York (City)	$17.00
Illinois	$10.00	Washington	$10.00

Some of these represent relatively low-volume operations and may not reflect what fingerprinting would cost if large numbers of day care personnel were to be screened. Also, some represent only the state cost for the screen, excluding the local costs of collecting and forwarding the cards, and processing the returns after the screen.

As an example of costs associated with volume operations, one state identification bureau director told us that he can easily process name-check-only data using mag-cards, but that fingerprint checks would require so much more staff that his facility would have to be moved. The New York City figure of $17 includes a $14 fee paid to the state and $3 to produce the cards. This will allow hiring only eight teams consisting of one fingerprinter and typist to fingerprint the first 60,000 child care workers in the city.

Other hidden costs involve the delays associated with such screenings in the hiring of employees. While the FBI advises that fingerprint checks are completed in less than 10 days, the state identification officials told us that the checks usually take 6-8 weeks to process and sometimes take up to 3-4 months. Moreover, fingerprinting is an exacting process, and large numbers of cards are routinely rejected by the FBI even after the state identification bureaus have approved and forwarded them.

Costs associated with screening against state criminal records files without fingerprinting are considerably lower, ranging from $2 to $5 per check. Some states, like Texas, use a two-step process for license/employment screens, involving a name screen first and a fingerprint later if needed to validate the identity of a specific employee. Other jurisdictions, like New York, believe that the two-step process is less efficient than fingerprinting from the start.

We estimate, therefore, that a nationwide criminal record check involving both a state file and the FBI file, requiring two fingerprint cards, would cost about $25 per employee in a large-volume licensing/employment screening operation. There are precedents for both full government financing of such screening efforts and fee payments by the employing organization or the applicants themselves.

> *"We want and need so desperately to find a solution to the tragedy of sexual abuse that we seem to be grabbing at the first remedy that comes along without considering its cost or its effectiveness."* [14]
>
> *Anne H. Cohn, National Committee for Prevention of Child Abuse*

EFFECTIVENESS OF SCREENING

Even the most avid proponents of background and criminal history checks on day care employees acknowledge that they are not a panacea for preventing sexual abuse in day care. Prosecutors, therapists, police investigators and other experts generally agreed that although none of the screening methods will catch significant numbers of pedophiles, the FBI's national fingerprint screen is more effective than any other screening method. Even the FBI system has significant limitations, however, which FBI officials acknowledged to Congress:[15]

(a) The FBI files are not complete. The information contained in them is furnished voluntarily by state and local law enforcement agencies. (Study participants report that some law enforcement jurisdictions are very lax about sending in fingerprints, which is the only way an arrest or conviction is built into a criminal history. Some states send 90% of their arrests and convictions to the FBI, but other states send in as few as 15%. The director of one state identification bureau indicated that out of 400 substate law enforcement jurisdictions, over 100 hadn't sent in a single fingerprint all year.)

(b) The records often do not specify whether the sexual assault victim was a child or an adult. (As one prosecutor noted, "We find out the accused has been convicted of battery, but we don't know if it involved a child or if he took part in a barroom brawl.")

(c) The FBI file contains no records on juvenile offenders unless they were tried as an adult. (Research suggests that 58% of all pedophiles committed their first sexual offense as adolescents.)

(d) The Identification Bureau does not disclose for licensing/employment screening purposes information on arrests for which there is no reported disposition, except for arrests within the previous 12 months.

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14 Statement presented at Congressional Joint Hearings of the Select Committee on Children, Youth & Families and the Subcommittee on Oversight of the Ways and Means Committee, September 17, 1984.

15 McConnell, Op. Cit.

There are other reasons why screening of day care centers would have limited effectiveness. First, most known child sexual abuse is committed by family members, not by unrelated child care providers. Statistics from Illinois show, for example, that in 1983 the following perpetrators committed child sexual abuse:[16]

Family member, relative	80.7%	Babysitters	6.7%
Adoptive Parent	2.2%	Other Not Related	7.2%
Foster Parent	.8%	Not Identified	1.0%
Institution staff	1.2%		

Based on statistics, day care employees as a group should be expected to have fewer child sexual abusers among their ranks than the general population because 78% to 92% of child sexual abusers are male,[17] while day care workers are 95% to 97% female. The effectiveness of screening, of course, has less to do with who commits child abuse than with who has a record of child abuse (or related crime) which will be discovered in the screening process. For example, the FBI reports that 80-85% of its records are for males, which means the probability of identifying a female child abuser is slim. There are reasons that child sex abusers may be expected to have a very low ratio of criminal records. Dr. Vincent Fontana, a nationally renowned expert on child sexual abuse, maintains that less than 1% of all child sexual abusers have criminal records.[18] Research conducted on sex offenders in Knoxville, Tennessee, found that despite long histories of sexual abuse, only 7% had prior criminal records, usually for offenses other than sexual abuse.[19] Another study involving 659 offenders who had committed a total of 280,000 crimes revealed that fewer than 15% had criminal records, again not necessarily for sex-related crimes.[20] Prosecutors cited case after case in which the perpetrator had no prior record.

There are other reasons why there are so few criminal records for child sexual abusers:

- Detection Difficulty: Sexual abuse of children is a crime that is very hard to detect. Other than the victims, there are usually no witnesses. These children are easily manipulated or intimidated into maintaining silence. Some children aren't aware that what is happening to them is wrong or unusual; others are extremely guilty or ashamed. Strong social taboos have kept people from talking about this issue, and even when faced with an abusive situation, many adults deny or ignore the problem.

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16 Illinois Department of Children and Family Services, Child Abuse and Neglect Statistics, Annual Report--FY 1983, p. 22.

17 - 78% figure cited by Jane Lapp, American Humane Association, Project Director, National Study of Child Abuse and Neglect Reporting.

- 92% figure from Illinois Department of Children and Family Services Report, Op. Cit., p. 22.

18 New York Times, November 7, 1984.

19 John Brogden, Director, Institute for Child Sexual Abuse, Ft. Worth, TX.

20 Dr. Judith Becker, Columbia University.

- Low Conviction Rates and Legal Manipulations: The variations which can occur in the course of legal proceedings are endless. The result is that sexual offenders who admit their guilt end up frequently having no record, or the record is for an offense that is not sex-related. When convictions do occur, they are often to lesser charges (e.g., a rape charge is reduced to simple assault). In other cases, prosecution or sentencing is deferred if the perpetrator agrees to treatment. If a convicted sex offender with deferred sentencing completes treatment and meets the conditions of probation, a finding of not guilty sometimes is entered on his record.

  There are many reasons why the conviction rate among child sex offenders is so low. Many respondents stressed that court proceedings are simply not geared to children. They make poor witnesses (e.g., can't remember dates, number of assaults, etc.) and can be traumatized by normal courtroom procedures. Many parents simply won't allow their children to go through the trauma of testifying. Reportedly, seminars are being held for defense attorneys on how to intimidate children and discredit their testimony in these cases. Furthermore, much of what children tell parents, doctors or therapists is excluded as heresay. Children also find it very difficult to confront the accused, a constitutional guarantee which keeps many courts from allowing the videotaped testimony of young children.

- Misdemeanors: Given the difficulty of producing evidence in such cases or of using children's testimony, felony charges frequently are reduced to misdemeanors via a plea bargaining process. For example, a charge of sexual contact may be exchanged for a guilty plea to indecent exposure or "flashing," usually a misdemeanor, which may result in no criminal record entry in the FBI system. In fact, state criminal records more frequently contain evidence of such sex-related actions even though they would not have been entered into the FBI file. This is one reason state screening officials urged state-level screens before the nationwide FBI screen.

The FBI reports that on licensing/employment screens generally (for everything from cab drivers to bankers) only 8% of all fingerprints submitted will be returned with any criminal history at all--for any kind of offense. This number is fairly consistent with what the state screening bureaus reported about the frequency of returns in general:

Estimated percent of persons screened against state criminal files who have a prior record of arrests for any crime

California	*7.7%*
Michigan	*3% - 5%*
New Hampshire	*1%*
New York	*5% - 10%*
Washington	*5% - 7%*
AVERAGE	*5%*

Estimated screening "hits" for sexual abuse of children, as opposed to all crimes, of course, are much lower. The FBI Identification Bureau has no statistics on sexual crimes against children. None of the screening systems currently in place has yielded many day care employees with past records of child abuse. For example:

- In 1983, a screen of 20,000 employees in New York against its child abuse registry resulted in 7 "hits" (.04%). Only 2.3% of all reports of child abuse and neglect in New York State in 1983 were for sexual abuse.

- A county in Florida which conducts statewide fingerprint screens of employees identified 2 people with criminal histories out of 3,000 screened (.07%). One was a janitor with previous sex crime convictions, and a second had been convicted of murdering an adult.

- Georgia conducts statewide and national fingerprint checks on day care operators and statewide name checks on other day care employees. Thus far, a check of 570 fingerprints has resulted in one "hit" (.2%) and name checks of 2,400 employees had identified 2 others (.08%).

In the course of this study, discussions were held with prosecutors, police officials and other experts familiar with 45 individuals charged with sexual abuse of children in 37 day care facilities (22 family home day cares and 15 centers). Based on the information available on these cases, a national background check as proposed in the law would have screened out only one of these perpetrators--a male operating a licensed facility who had served time in a military prison and lost his nursing license as a result of previous convictions for abuse. The only other person with a prior record was a male who was on probation for similar acts, but because he was operating an unlicensed facility, he probably would not have been caught.

In addition to the fact that so few of these perpetrators had prior records, many probably would not be subject to the new screening mandate. For example:

- Eighteen were spouses, sons and other male relatives and friends who would not have been caught unless fingerprinting were extended to family members and friends. Furthermore, the nine sons were all juveniles and would not have a permanent record.

- Five were men who had access to children in day care, but were not direct providers of child care. These perpetrators--janitors, the mechanic who worked on the bus, the driver of a delivery van, etc.--would not have been caught unless the required fingerprinting extends to volunteers and other peripheral employees with access to the children.

- Four were in unlicensed family day care homes and probably wouldn't have been screened.

Many people argue that the time and expense of fingerprinting are justified, even if only one or two pedophiles are caught. They also maintain that mandatory fingerprinting will deter sex offenders from seeking day care jobs. There is equal concern, however, that a mandatory fingerprint screen will lull the public into complacency and create a sense of false security. Almost all parents said that they would feel more secure knowing that day care employees had submitted to criminal history checks. Countered a child abuse expert, however, "I am concerned that people will think that because an employee's record is clean, everything is o.k. That's simply not the case and can be as dangerous as doing nothing."

Screening needs to be placed in perspective. "Catching" an abuser through screening will not incarcerate him or place him in treatment. Presumably he has been through that. All screening will do will stop someone from getting <u>that</u> job

that day. This is consistent with experts' views that children won't really be any safer overall because pedophiles will just turn to other child-oriented activities such as youth sports, recreation centers, or the unlicensed day care down the street.

A number of respondents feel strongly that the mandate to fingerprint all day care employees is an over-reaction resulting from publicity over a few very notorious cases of sexual abuse in day care programs. Noted one nationally known expert in the field of child abuse, "Hysteria is not the proper impetus for the formation of solid public policy." Many participants also expressed concern that the current climate will drive dedicated quality employees out of day care, especially males.

SUMMARY: A POSSIBLE SCREENING SCENARIO

- *680,000 current employees in licensed child care + 47% turnover/growth = 1 million employees to screen.*
- *1 million state fingerprint checks (@ $13) and FBI checks (@ $12) = $25 million.*
- *About 50,000 (or 5%) will have some criminal record (e.g., shoplifting).*
- *Perhaps 1000 (or 2% of those with records) are child sex abusers.*
- *Firing or not hiring these 1000 would cost $25,000 per "child sex abuser diversion."*
- *"Diverted" child sex abusers could still be employed in unlicensed facilities or volunteer in licensed ones.*
- *Since most child sex abusers don't have any criminal records, they wouldn't have been diverted.*
- *Probably half of the child sex abusers in child care operations aren't employees and would not even have been screened.*

States, cities and counties currently involved with screening day care employees all report having had to struggle with many issues to clarify their laws and ordinances. They uniformly advise that in order to minimize the number of due process questions and other legal challenges which may be anticipated, a number of issues will need to be clarified before the federal mandate is implemented:

1. Which crimes will apply and who will decide whether a person is precluded from employment? Although most of the states currently screening day care employees for child abuse have fairly specific guidelines as to which crimes would make a person unsuitable for day care employment, they still find a lot of "grey" areas. Noted one person currently involved with such a system, "We know not to count bad checks, and we know we do count rape, but what about prostitution, a drug bust (marijuana) at a college party 12 years

ago, or the murder of a cop? We really have to look at each one on a case by case basis. We've had to make lots of judgment calls." The City of New York is currently developing an entire manual on how to treat records of current or potential day care employees. States stress that there needs to be a specific policy on who makes the final decision (e.g., who is liable?), and how much information is released to the provider. There also needs to be an appeals process and careful attention to privacy issues.

2. Who will be screened? Prosecutors and other experts stressed that approximately half the institutional perpetrators of sex crimes are individuals outside the immediate paid staff of the day care facility, but with access to the children. There are many instances of abuse by janitors, bus drivers, volunteers and friends and relatives of day care staff in centers. In home day care settings, the perpetrators are frequently spouses or sons of the operators, and often adolescents. To include everyone with access to the children in a screen will greatly expand the magnitude of what will be a massive undertaking if only the immediate staff are screened.

   Also, does a person need a fingerprint check to apply for a job, or as a final condition of employment? Can the person be a probationary employee until the criminal history is verified? Is a new fingerprint check required everytime a person changes jobs? Does someone have to be rechecked from year to year, once they are on file?

3. What is a "background check"? Legal experts advise that without clear, tight definitions as to what will be used, there will be much litigation, especially in privacy-conscious states. Can a check also include arrest records, consulting the civil child abuse registry, etc.?

4. What about differences between state laws and jurisdictions? What happens when a person has been convicted of an act that constitutes a crime in one state but is not considered to be a crime in the requesting state? How do states deal with the fact that various jurisdictions define crimes differently (e.g., an act which would be considered disorderly conduct in one place would be considered lewd conduct elsewhere)?

5. Who will pay? Will the cost of screening be borne by providers, employees and applicants, states, etc.?

6. Penalties for noncompliance? Will HHS penalize Title XX if day care providers comply, but corrections officials refuse?

> *"Many offenders have explicitly said they wouldn't abuse kids if they knew the children would tell."*
> *Dr. Judith Becker, Columbia University*

PREVENTION: EDUCATION

There are no quick, easy or simple answers to the question, "How can child sexual abuse best be prevented?" Study respondents agreed that current licensing practices and fingerprint screens are by no means the whole answer. Many parents, providers and state officials noted that licensing often means only that a provider meets minimal facility and staff ratio standards, which are monitored infrequently.

Although all states regulate day care, there is great variation among states in their licensing and/or registration requirements. Some study respondents cautioned against federal or state action to increase licensing standards severely. Although they fear that overly stringent licensing requirements would drive many more providers underground, they do urge states to monitor licensed providers more regularly to assure that reasonable standards are met. Furthermore, many study respondents raised the concern that heavy governmental emphasis on fingerprint screens may lull parents into a sense of false security, i.e., into assuming that such checks will guarantee their children's safety from sexual abusers, when, in fact, fingerprinting will divert few child sex-abusers. They urge that fingerprint screens be used as a complement to other deterrent or prevention activities.

There is consensus among those who have worked with both victims and abusers regarding some actions besides screening which will help deter child sexual abuse:

- The key recommendation is to educate everyone, but especially children, parents, teachers and caretakers to the existence of abuse, what abusive behavior is, what to do when faced with an abusive situation and how to avoid abuse.

- Next, respondents say we must teach both parents and children to report, and to report promptly, when abuse does occur.

Other suggestions aimed at preventing child sexual abuse include:

- Required reporting of sexual abuse by teachers, caretakers and medical personnel
- Revamping of child protective service programs and retraining of CPS social workers
- Increased and improved counseling programs for families at risk
- Improved and increased treatment programs for victims and abusers
- Judicial reform of the criminal court system to reflect the developmental differences between adults and children
- More vigorous investigation and prosecution plus imposition of tougher penalties for convicted abusers.

Prevention of sexual abuse in day care settings is easier to define than intrafamilial child sexual abuse. The first line of defense still rests with the

parents who must become involved: parents should get to know the staff, make unannounced visits, meet other parents and have a roster of other parents' names and phone numbers and, most important, know and recognize the telltale signs of abuse. (For a brief outline of detection signals, see page 8 of this report.)

Day care providers can prevent sexual abuse by:

- Educating staff to be aware of the signals of abuse
- Asking for and checking all applicants' references before hiring (both teaching and non-teaching positions); asking on the application form whether the individual has ever been arrested, charged or convicted of crimes against children
- Encouraging parents to visit at any time
- Imposing a probationary period for all new staff
- Never allowing teachers or any other staff to be alone with any child
- Never allowing children to leave the premises without parental permission and accompaniment
- Fostering, within the realities of the physical structure, as much open space as possible--leaving doors open, eliminating "nooks and crannies" and other places where children can be separated from others, etc.
- Teaching the children through repetitive training with proven materials and approaches on sexual abuse curricula
- Supervising staff and volunteers carefully.

Since education is the cornerstone of these prevention strategies, study respondents recommended increased federal and state roles in supporting, developing and disseminating information to combat child sex abuse. Education programs must be targeted to each specific audience, e.g., children, parents.

The most commonly mentioned education programs for children are referred to as the "good touch/bad touch" approach. The foundation for many of the available good touch/bad touch materials originated with the Minneapolis Illusion Theater in the 1970s. Essentially this approach tells children (a) what kinds of touching are appropriate and what kinds are wrong, (b) it's o.k. to tell, (c) whom to tell and (d) how to avoid the abuser. Some education programs teach children assertive skills for escaping or resisting sexual abuse, primarily to say "no" to the potential abuser. This emphasis on resistance is, at best, controversial, especially for younger children who are taught to respect and obey the wishes of adults and who would have difficulty sorting the conflicting emotions, needs and expectations during the immediacy of the abusive contact. "The emphasis for children should be on telling rather than on saying 'no.' We'll never prevent sexual abuse by instructing a child to say 'no,'" emphasized Lucy Berliner of the Seattle Sexual Assault Center.

Anti-sex-abuse educational materials and other resources are proliferating. One focal point for cataloguing these resources is the National Committee for Prevention of Child Abuse, based in Chicago. In both government and private efforts to educate the public, it is probably desirable to emphasize the point, as one expert contacted in this study put it, that "this is not to be confused with sex education--it is public health and safety education."

STUDY METHODS

During this program inspection, staff from the Office of Inspector General (OIG) and the Office of Human Development Services interviewed by telephone 300 respondents from 49 states and the District of Columbia (New Mexico is the missing state). All telephone interviews were conducted during November 1984. Individual respondents included:

- state child protective staff and social workers,
- state licensing officials,
- city and county licensing staff,
- state criminal identification system directors,
- Congressional staff,
- Federal Bureau of Investigation staff,
- physicians,
- clinical psychologists,
- sexual assault therapists,
- district attorneys,
- police investigators,
- a judge,
- university researchers,
- other experts in child sexual abuse,
- parents of children in child care,
- providers of child care, including three major proprietary chains which represent more than 1,500 centers, and
- representatives of special interest groups.

OIG Region X staff then analyzed all data gathered from the telephone surveys, plus published data provided by study respondents.